

**AHCIET COMMENTS**  
**TO THE NOTICE OF INQUIRY (NOI) ON**  
**“THE EFFECTS OF FOREIGN MOBILE TERMINATION RATES ON**  
**U.S. CUSTOMERS (IB Docket No. 04-398)”**

**AHCIET’S PRESENTATION**

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AHCIET’s mission is to promote the development of the telecommunications, information and communications technologies sectors in Iberoamerica, fostering the cooperation among members, institutions of the public sector and other international organizations.

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## **AHCIET'S COMMENTS**

AHCIET would like to take the opportunity to provide its comments to the FCC Notice of Inquiry (NOI) on the effects of foreign termination rates on U.S. customers, issued on October 26, 2004, as this association company provided its views on the ISP Reform proceeding in 2002.

In order to assess the impact of foreign mobile termination rates on U.S. customers, it is essential to take into account the following considerations:

### **A . General considerations**

#### **I. Jurisdictional Scope: Competences of the FCC**

- **Existence of a global telecommunications market**

This consultation affects the broad field of electronic communications, as part of a global and worldwide market of telecommunications, regulated by the GATS agreements within the WTO.

If any conflict arises and taking into consideration the existence of the GATS within the WTO, the FCC must seek the best possible solution within the WTO-GATS. Since the USA is a Member State of the WTO, WTO involvement should be the preferred procedure for undertaking any resolution of conflicts amongst its members.

One of the objectives that inspired the negotiation of the GATS, of which the USA was a clear proponent, was the "establishment of a multilateral framework for principles and laws directed at the progressive opening of the services industry to facilitate the expansion of this trade and contribute to the economic development of the entire world". For WTO Member States, compliance with this framework guarantees that the terms and conditions for the service industry are provided under non-abusive terms in international commerce. The U.S. Government should comply with this multilateral framework for negotiating and resolving its interests. Furthermore, the U.S. Government should furthermore recognise that the commercial practices currently in effect are contributing to world economic growth (thus complying with economic policies and the free market of each Member State in its entirety). In short, its decision should not be based solely on the cost savings for its own consumers, the reduction of costs for North American carriers and stability in the USA's balance of payments.

Moreover, governments are free to choose whatever termination model they consider most suitable to internal market development and competition enhancement. Only national policy can grant the authority to supervise national termination rates. Consequently, the FCC has no jurisdiction to undertake unilateral actions regarding national regulatory policy and, in particular, in relation to foreign termination rates.

- **Sovereignty of National Authorities on its national markets.**

The FCC cannot intervene in other national markets. These markets have a specific national regulatory framework that guarantees its control and supervision in order to detect any problem and to come up with the most adequate remedy.

Furthermore, in Latin America – although there is no uniformity in markets or regulations – it can be said that in general, mobile services have grown in a highly satisfactory manner, achieving penetration rates in some cases nearing those of developed countries. This is in spite of the restrictions caused by the substantially lower available income on the part of its citizens. So we may conclude that the regulatory frameworks applied have had a positive effect.

Call termination rates on mobile networks have been adjusting to the reality of each of the markets, whether it be as a result of the agreements freely entered into between operators or through actions taken, which regulators have considered necessary, such as linking call termination rates on mobile networks to the rates that operators are charging their own customers, in markets which – as we know - are highly competitive.

- **Non-discrimination principle<sup>1</sup>**

One of the most important principles applicable to the telecommunications market is the principle of non-discrimination. The acceptance and application of the non-discrimination principle is compulsory for operators in a state where GATS commitments have been adopted. These commitments and, once again, their supervision by national regulatory authorities, prevent the existence of different prices for termination services depending on the interconnected operator or the origin of the call.

Thus, the price that carriers transporting international calls must pay, no matter what the origin of the call, is exactly the same as for other operators, either national or international, because. Non-discrimination is possible between national and international interconnections. This is a result of the application of an elementary non-discrimination obligation. From this perspective, considering that all international carriers (American, Latin-American, Asian, African or European) are in the same position regarding termination rates to be paid to mobile operators, it is not possible to imagine a differentiated price just for terminating calls that have a US origin.

Likewise and still based on the non discrimination principle, positive discrimination in favour of US consumers by charging a lower tariff than to other consumers cannot be contemplated either. This hypothetical case could lead or facilitate practices involving the so-called “*refilling*” phenomenon, i.e. routing the traffic destined to non-US mobile operators through US international carriers benefiting from these special advantages.

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<sup>1</sup> VERIZON, República Dominicana, member of AHCIET, withholds its opinion on this paragraph.

- **Dynamism of the mobile communications market and increase in competition**

AHCIET would like to emphasize that the mobile markets in Latin American are very competitive, since mobile services were born under competitive conditions. Despite the short existence of the mobile market, the results achieved have been very positive, increasing the quality and number of services provided but also resulting in an accessible level of prices for consumers.

Therefore, this increase in competition levels has a clear effect on the general level of prices as there are more competitors, hence more market pressure. At the same time, eliminate those costs that are not strictly necessary, in order to become more competitive. Mobile operators have not been left out of this competitive pressure and, consequently, their prices have also been decreasing in recent years.

## **II. RPP model vs. CPP model**

It is essential to bear in mind that every country has the complete freedom to choose the system they wish to apply for a proper development of their telecommunications market.

RPP (Receiving Party Pays) and CPP (Calling Party Pays) are just two different termination models. Each model has its own particularities and every country has been free to chose between them. But this choice has significantly influenced the development of the national telecommunications market through the mobile sector. Thus, economic data clearly indicates that those countries that opted for CPP have achieved major benefits for their societies at a faster pace.

Specially remarkable are the following differences between both models:

- ***Relationship between mobile penetration and mobile termination model***

Countries under the CPP model seem to exhibit higher levels of penetration than countries under the RPP level. On the reason may be that under the RPP model, mobile users cannot have an effective control of their telecommunication costs. User's fees not only depend on calls made by the customer but on incoming calls. Therefore, the RPP model raises greater difficulties for low consumption segments and segments with low income levels that – in Latin American – represent the most important part of population. By the contrary, the CPP model allows users to fully control their expenses. Consequently, this market is open to all users and has allowed a successful implementation of the prepayment method, especially suited to low income and consumption segments.

- ***Nature of the termination service***

The distinction between models also affects the nature of the call termination service. While under the RPP model, call termination is conceived as a service offered by the destination operator to the final user receiving the call, under CPP, call termination is a service offered by the destination operator to the operator originating the call. Thus, with the CPP system, the relationship is limited to

network operators, preventing the outcome of this relationship from being extended to the service provision conditions offered to the end user.

- ***Differences between RPP and CPP termination rates<sup>2</sup>***

The disparities between both models account for the differences in mobile termination rates. CPP markets necessarily exhibit different conditions for demand and different nature of the cost structure of the businesses and consequently different pricing patterns than RPP markets. The CPP mobile termination rates probably are higher than RPP mobile termination rates. Nevertheless, the fact that these mobile termination tariffs are higher does not mean, in any way, that they are not fully justified. Termination rates correspond to the business model of mobile operators as established under national regulation and are continuously-as we said- being monitored by the national regulatory authorities.

It is also important to consider that the adoption of the CPP model has been included in many national regulatory rules in Latin America. Hence any attempt to push for its amendment due to alleged anti-competitive effects should be referred to the competent international bodies, such as the WTO, where appropriate instruments exist to solve these types of controversial matters (*cfr 1. General Aspects. Lack of jurisdiction by the FCC*).

## **B . Specific considerations**

AHCIET considers it is necessary to provide specific comments on some particular aspects raised in the FCC paper.

### **I. Need of a clear analysis of the current U.S. market situation**

In its paper, the FCC seems to focus on the situation of the foreign mobile market instead of trying, initially, to carefully analyse the current situation of the US market and any possible failures.

The FCC appears to be worried about the impact of foreign termination rates on their customers. However, a more careful look at the American market shows that there is no such impact. What's more, faults in its own market are preventing the translation in foreign termination rates of reductions to North American customers.

The FCC attributes the prices paid by its consumers to foreign termination rates. Nevertheless the FCC indicated that, during the period 1997 to 2001, international accounting rates have decreased from \$0.35 to \$0.14 while the average retail prices for outgoing US international calls have decreased from \$0.67 to \$0.33. Using these figures (provided by the FCC), it can be stated that the margin for international carriers (difference between average retail price and international accounting rate, not including other operational costs) has significantly increased from 48% to 58% over the same period of time. These surprising figures may lead us to consider that rate reductions

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<sup>2</sup> COLOMBIA TELECOMUNICACIONES and VERIZON, República Dominicana, member of AHCIET, withholds its opinion on this paragraph.

has not been totally passed on to the US end consumer but used by the main US international carriers to significantly increase their profits.

The information provided in the TeleGeography 2005 report supports this statement: the settlement rates paid to foreign countries by the three major US carriers (AT&T, Worldcom and Sprint) have decreased from \$0.37 to \$0.10. However, *“The comparison of fixed and mobile retail rates suggests that carriers are now recovering their high costs of mobile termination... and then some....while the average wholesale carrier mark-up for calls to mobiles is \$0.12 per minute higher than calls to fixed, the retail mark-up is \$0.27... For many carriers, it would seem that high mobile termination fees offer a useful excuse to stem the price decline trend.”*<sup>3</sup>

As it is stated in the above mentioned report, during the same period (1997 to 2003), international US outgoing traffic (AT&T, Sprint, Worldcom, others) there is increased around twice (approximately from 25 to 50 billions minute). Since the long-distance international market is a business involving economies of scale, under conditions of effective competition, any increase in traffic should reduce the average costs per minute that the US carrier has to bear for carrying a call from the originating point to the interconnection point through the international carrier. In addition, the costs related to capacity leasing have decreased annually by 50%. However, the income retained by the large carriers has remained practically constant. Therefore and as the following diagrams show, there are indications that US carriers have not passed on these cost savings to their customers.

The previous figures and facts show that it should be necessary a deeper analysis by the FCC of the U.S. carriers' price structures, as the latter should align their prices to the costs of this type of calls. This does not seem to be the case in this particular issue. Moreover, does not indicate whether U.S. carriers are translating the decrease of mobile termination charges abroad in their own prices. The FCC seems to assume that these prices are too high but it is not looking carefully at the reasons for these price levels, by not analysing U.S. carriers actions, considering the tariffs movements for their decrease abroad.

Another relevant issue not mentioned in the FCC paper is the level of transparency brought by U.S. carriers to their users in order to inform them of the current tariff model for foreign mobile calls. U.S. carriers should ensure that the users are precisely and well-informed of the tariffs they charge for the services they offer. However, the FCC does not seem to have studied this important point, as nothing is mentioned in its paper. But price transparency is an essential issue in a competitive market and strives to increase U.S. users' protection.

## **II. Looking for the benefit of North American users**

The goal of regulatory actions is to foster competition for the benefit of end users and consumers. But, in this case, it is probably that FCC's actions would produce a protection of North American operators more than international end users or even North American customers. As previously discussed, North American operators have not passed rate reductions on to end consumers. Moreover, unilateral actions by the FCC will hurt competition in the international arena in favour of a limited number of

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<sup>3</sup> TeleGeography Research, “TeleGeography 2005”, November 2004.

players in a specific country. This action seems to be against the international interests in the global electronic communications market.

Moreover, if we carefully read the FCC paper, there is no explicit or reiterative complaints by North American users regarding foreign termination rates. Therefore, we ask ourselves whether termination rates do pose a real problem for North American users and whether FCC intervention is really required.

In the words of the FCC<sup>4</sup>, U.S. international telecommunications carriers apply mobile surcharges to residential customers when calling to 161 countries. AHCINET wonders about the reasons for these charges and urges the Commission to open an investigation into these added fees.

Finally, it is essential to indicate that, in a global market, rules cannot be applied in an asymmetric way to guarantee the balance of different market situations. For this reason, it is quite surprising that the FCC seems to be asking for cost orientation from foreign mobile operators in order to decrease mobile prices. However this NRA does not wish to impose a similar obligation on their carriers, in order to benefit U.S. users. Therefore, AHCINET wonders what the final objective of the FCC is and would not like to think that the main goal of this consultation is to solely protect the interests of U.S. carriers instead of U.S. consumers.

On the other hand, AHCINET would like to emphasize that it is inappropriate to simply compare US termination rates with the termination rates of other countries, without taking into consideration the overall context of the Latin-American mobile market and - as previously mentioned - the results achieved so far in terms of increased penetration, tariff reductions, network expansion, service provision for low-income population segments, amongst others.

As a conclusion and in order to guarantee user benefits, a proper analysis of the U.S. market must occur. Such an analysis will detect market failures and increase users' information about these foreign mobile terminated calls.

Finally, AHCINET would like to point out that there are no existing barriers able to block direct interconnection between U.S. carriers and mobile operators. Such interconnection will decrease the number of mediators, thus reducing the charges passed on to U.S. consumers.

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<sup>4</sup> FCC 04-247